IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH AT HYDERABAD

THE HON'BLE SRI JUSTICE GOPALAKRISHNA TAMADA

Writ Petition No.15254 of 1997

Dated: 19-01-2007

Between:

Kum. Batlanki Kanakamaha Lakshmi,
D/o B. Pundarikaksha Rao, aged 18 years, Hindu,
Student, r/o Door No.44-401/3/4, Nandagiri Nagar,
Visakhapatnam.

... Petitioner

and

1. The Commissioner of Tribal Welfare,
   Andhra Pradesh, Hyderabad and 3 others.

... Respondents

ORDER:

This writ petition is filed questioning the records pertaining to the proceedings of first respondent in RC.No.2747/96/TRI/VC-I, dated 16-06-1997 and to quash the same, and consequently direct first respondent to issue the scheduled tribe clearance certificate to petitioner.

2. It is the case of petitioner that though she belongs to 'Bentho Oriya'

community, a Scheduled Tribe, to avoid humiliation in the locality and to get minimum needs like drinking water and provision etc., her paternal grand parents proclaimed them as 'Sistikaranams' community and the said proclamation was made innocently and for survival only. It is also the case of petitioner that her paternal uncle was prosecuted in C.C.No.5306 of 1962 by learned III Presidency Magistrate, Saidapet, Madras for the charge that he has claimed reservation as a Scheduled Tribe belonging to 'Bentho Oriya' community and the said case ended in acquittal. Further, the said acquittal was confirmed in Crl.R.C.No.1208 of 1963 by the High Court of Madras, vide order dated 07-02-1964 and as against the said order no appeal was preferred before the Supreme Court of India.

It is stated by petitioner that she appeared for entrance test for M.B.B.S. course in the year 1996-97 and selected in the test. Thereupon, second respondent called for a report from first respondent about the social status of petitioner and based on the said report, cancelled her seat. According to petitioner, she filed W.P.No.2862 of 1997 and this Court disposed of the said writ petition on 25-02-1997 directing second respondent to admit petitioner in the first year M.B.B.S. course and further directed first respondent to proceed with the enquiry of the social status of petitioner.

It is also according to petitioner that when respondent authorities issued Memo dated 10-04-1997 with all false and untenable allegations, petitioner submitted her detailed explanation and filed W.P.No.9208 of 1997 questioning the validity of the said show cause Memo. It is stated that, however, pursuant to the directions of this Court, second respondent gave admission to petitioner in the fourth respondent College and she had completed her studies.

3. The grievance of petitioner is that though she belongs to 'Bentho Oriya' community, a Scheduled Tribe, first respondent, without having any jurisdiction, conducted enquiry and passed the impugned order dated

16-06-1997, with incorrect and irrelevant findings, holding that as petitioner belongs to 'Sistikaranams' community, she is not eligible for a seat in First year MBBS course under Scheduled Tribe Quota in any Medical College in Andhra Pradesh.

4. Heard learned counsel for the parties and perused the impugned order.

5. This Court on 17-07-1997 while issuing *Rule nisi* granted interim suspension of the impugned proceedings in W.P.M.P.No.18474 of 1997. By virtue of the said order, according to learned counsel for petitioner, petitioner prosecuted her studies and completed her medicine degree.

6. To consolidate the issue of Community Certificates relating to persons belonging to the Scheduled Castes, Scheduled Tribes and Backward Classes and matters connected therewith or incidental thereto, the State of Andhra Pradesh enacted Act No.16 of 1993 i.e. The Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of issue of Community Certificates Act, 1993 (for short, 'the Act'). Section 3 of the Act deals with making of an application for issuance of Community Certificate and as per Section 4 of the Act the competent authority is empowered to issue Community Certificate or reject the application. Further, as per Section 5 of the Act, if it comes into light that it is a false Community Certificate, the District Collector shall, by notification, cancel the said Certificate. The said Act has come into existence with effect from 15-05-1997 and the Rules i.e. The Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of issue of Community Certificates Rules, 1997 were promulgated by issuing G.O.Ms.No.58, Social Welfare (J) Department, dated 12-05-1997 and the said Rules were notified in the Gazette on 16-05-1997. From the above provisions of law, it is clear that it is only the

Collectors of the respective Districts, who are competent to hold enquiry and cancel the caste certificates, ultimately if it is found to be bogus.

7. In the instant case, the Commissioner of Tribal Welfare held an enquiry and came to the conclusion that the certificate issued to petitioner or obtained by petitioner is false and thus cancelled the said certificate, which in my considered view is definitely without jurisdiction. In fact, this Court had an occasion to deal with a subject like this, in the case of **T.V.S.S.KUMAR v. COMMISSIONER OF TRIBAL WELFARE, HYD**[1] wherein it was held that the Commissioner's order is without jurisdiction.

8. In the light of the above discussion, this Court has no hesitation in coming to the conclusion that the orders impugned in this writ petition, are wholly without jurisdiction and are liable to be set aside. Accordingly, the proceedings in RC.No.2747/96/TR1/VC-I, dated 16-06-1997, passed by first respondent is hereby set aside.

9. Accordingly, the writ petition is allowed. No costs.

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JUSTICE GOPALAKRISHNA TAMADA

Dt.19-01-2007
GLV

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[1] 2006 (2) ALD 80